



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2011-0091, EPA-R03-OAR-2011-0584; FRL- 9685-2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the limited approval of the Commonwealth of Virginia's Regional Haze State Implementation Plan (SIP) revision. EPA is taking this action because Virginia's SIP revision, as a whole, strengthens the Virginia SIP. This action is being taken in accordance with the requirements of the Clean Air Act (CAA) and EPA's rules for states to prevent and remedy future and existing anthropogenic impairment of visibility in mandatory Class I areas through a regional haze program. EPA is also approving this revision as meeting the infrastructure requirements relating to visibility protection for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the 1997 and 2006 fine particulate matter (PM_{2.5}) NAAQS.

DATES: This final rule is effective on [insert date 30 days from date of publication].

ADDRESSES: EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2011-0091, EPA-R03-OAR-2011-0584**. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is

not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S.

Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Melissa Linden, (215) 814-2096, or by e-mail at linden.melissa@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA. On January 25, 2012 (77 FR 3691), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed limited approval and limited disapproval of Virginia’s Regional Haze SIP. The formal SIP revisions were submitted by the Virginia Department of Environmental Quality (VADEQ) on July 17, 2008, March 6, 2009, January 14, 2010, October 4, 2010, November 19, 2010, and May 6, 2011. This revision also meets the requirements of CAA sections 110(a)(2)(D)(i)(II) and 110 (a)(2)(J), relating to visibility protection for the 1997 8-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS.

II. Summary of SIP Revision

The SIP revision includes a long term strategy with enforceable measures ensuring reasonable progress towards meeting the reasonable progress goals for the first planning period through 2018. Virginia's Regional Haze Plan contains the emission reductions needed to achieve Virginia's share of emission reductions and sets the reasonable progress goals for other states to achieve reasonable progress at the two Class I Areas within Virginia, Shenandoah National Park and James River Face Wilderness Area. The specific requirements of the CAA and EPA's Regional Haze Rule (RH rule) (64 FR 35732, July 1, 1999) and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. EPA received numerous adverse comments on the January 25, 2012 NPR. A summary of the comments submitted and EPA's responses are provided in section III of this document.

III. Summary of Public Comments and EPA Responses

Comment: The commenter argued that EPA's proposed limited approval/limited disapproval action based on Virginia's reliance on clean air interstate rule (CAIR) is unwarranted and should be withdrawn. Instead, the commenter states that EPA should grant full and unconditional approval of the Virginia Regional Haze SIP. The commenter disagreed that CAIR renders the State's SIP unable to satisfy all of the CAA's regional haze SIP requirements. The commenter noted that Virginia's SIP was submitted prior to the remand of CAIR and relied on the requirements under 40 CFR 51.308(e)(4), which remain in effect at this time. The commenter argued that as a result, the Virginia SIP is entirely consistent with the applicable law. The commenter also argued that if the D.C. Circuit invalidates the cross state air pollution rule (CSAPR), EPA's limited disapprovals of regional haze SIPs due to their reliance on the CAIR

equals best available retrofit technology (BART) provision of the regional haze rules will have created unnecessary complications for states that should properly be able to continue their reliance on CAIR. The commenter argued that EPA does not have a basis to propose or promulgate disapproval or limited disapproval of a Regional Haze SIP due to its reliance on CAIR and on 40 CFR 51.308(e)(4) because the SIP is fully compliant with the relevant regulations as they exist today¹. The commenter believes that the only proper course of action for EPA is to promptly promulgate a full and unconditional approval of the Virginia SIP.

Response: EPA disagrees with the commenter and has determined the limited approval/ limited disapproval is appropriate for this SIP. The requirements for a BART alternative program, specific to trading programs in 40 CFR 51.308(e)(2) state that “such an emissions trading program or other alternative measure must achieve greater reasonable progress than would be achieved through the installation and operation of BART.” EPA’s analysis, in 2005, showing that CAIR would provide for greater reasonable progress than BART, was based on the then reasonable assumption that CAIR met the requirements of the CAA and would remain in place. EPA’s Transport Rule, commonly referred to as the CSAPR, sunset the requirements of CAIR. EPA’s decision to sunset CAIR is the result of a decision by the Court of Appeals for the D.C. Circuit remanding CAIR to EPA and leaving CAIR in place only “temporarily,” as noted in our notice of proposed rulemaking and by the commenters. As such, notwithstanding the regulatory text in 40 CFR 51.308(e)(4), we cannot fully approve the Virginia Regional Haze SIP which relies heavily on CAIR as part of its long-term strategy and to meet the BART requirements.

The EPA has also completed an analysis and has proposed the Transport Rule as an alternative

¹ The word “today” in the text refers to the date of the comment letter, February 24, 2012.

to BART for electrical generating units (EGUs) located in the Transport Rule states (which include Virginia). (76 FR 82219, December 30, 2011). Given the significance of the emissions reductions from CAIR to Virginia's demonstration that it has met the requirements of the Regional Haze Rule, EPA proposed issuing a limited disapproval of the Virginia SIP. Although CAIR is currently being administered by EPA pursuant to an order by the Court of Appeals for the D.C. Circuit in *EME Homer City Generation, L.P. v. EPA*, it will not remain in effect indefinitely. For this reason, EPA cannot fully approve Regional Haze SIP revisions that rely on CAIR for emission reduction measures.

Comment: The commenter stated that EPA's proposal of approving the reasonable progress controls for Mead Westvaco is contrary to EPA's position in the proposal of Arkansas's Regional Haze SIP that the uniform rate of progress (URP) does not establish a "safe harbor" and is not supported by the preamble to the RH rule (64 FR 35732). The commenter also stated that VADEQ and EPA placed undue weight on the premise that the visibility improvements projected for the affected Class I areas are in excess of those needed to be on the URP glidepath, and therefore, a less-rigorous Reasonable Progress analysis was acceptable. Another commenter gave a similar comment but added that the 1 percent contribution to impairment before a source will be considered for control for reasonable progress purposes is arbitrary.

Response: EPA disagrees with the commenter regarding the comments on the URP. The RH rule preamble states that "[i]f the State determines that the amount of progress identified through the [URP] analysis is reasonable based upon the statutory factors, the State should identify this amount of progress as its reasonable progress goal for the first long-term strategy, unless it

determines that additional progress beyond this amount is also reasonable. If the State determines that additional progress is reasonable based on the statutory factors, the State should adopt that amount of progress as its goal for the first long-term strategy. Virginia did determine that the reasonable progress goals (RPG) for the first implementation period would be beyond the URP and developed the RPGs using the four factors required by the statute. As such, the URP glidepath was not a stopping point for analysis done by VADEQ. The analysis of reasonable measures evaluated by VISTAS can be found in Virginia's appendices. The 1 percent contribution of impairment for reasonable progress is not arbitrary, but rather explained in Virginia's submittal.

Comment: The commenter stated that a 90 percent efficient scrubber at Mead Westvaco should be reasonable progress instead of the upgrade to the current flue gas desulfurization (FGD). The commenter stated that the new scrubber with 90 percent efficiency could have a cumulative improvement of visibility on four Class I areas of 0.8-1.3 deciview beyond the BART limit. The commenter also stated that the upgrade to the current FGD results in a cumulative improvement of visibility on four Class I areas of 0.3 deciview beyond BART.

Response: The visibility improvement provided by the commenter is calculated using a cumulative impact, combining the improvement at all class I areas impacted by the source. The RH rule does not require the use of cumulative impact in reviews done by the state, and VADEQ chose not to assess visibility on a cumulative basis. Virginia did include in their determination for reasonable progress that the upgrade of the FGD at Mead Westvaco, along with the other measures in the long-term strategy ensure that the state is on the glidepath for

achieving natural background for the 20 percent worst days by 2064 and that there is no degradation to the 20 percent best days as required. Thus, EPA agrees that the upgrade to the FGD is acceptable for reasonable progress in the regional haze planning period.

Comment: The commenter believes that VADEQ overestimated the costs of a New Caustic flue gas desulfurization (FGD) and new Spray Dryer with Baghouse, while the commenters analysis shows that the costs of a New Caustic FGD and new Spray Dryer with Baghouse are reasonable in terms of total and incremental costs per ton and per deciview.

Response: EPA disagrees with the commenter's analysis of costs of the FGD and baghouse. The approach used by the commenter to calculate the revised costs of the New Caustic FGD and Spray Dryer with Baghouse use a cumulative total visibility impact and this approach is not required by EPA, but rather recommended. The state has the option to use a cumulative approach for calculating the cost per deciview of a control technology. EPA therefore agrees with VADEQ in their reasoned cost analysis for BART controls for sulfur dioxide (SO₂).

Comment: The commenter stated VADEQ was incorrect and inconsistent in applying its cost thresholds, and its conclusions are inconsistent with BART determinations for paper mill power boilers in Virginia and in other states.

Response: EPA disagrees that VADEQ's BART determinations are incorrect, or inconsistent, or unreasonable. BART determinations are done on a case-by-case basis, so it is possible that a control technology for one power boiler may not be a reasonable option for another. The state

has the discretion to rank the technologies of the BART determination in their analysis. Virginia has completed this analysis to show the upgrade of the current FGD is BART and EPA agrees. The commenter supplied other BART determinations which have different fuel types than that of the Mead Westvaco Facility in Virginia, and the power boiler number 9 is in a combined stack with three other power boilers that go through the FGD and will receive additional SO₂ reductions as a result of the upgrade required for BART. Therefore, the commenter's statements are not analogous, and EPA finds Virginia's determinations reasonable.

Comment: The commenter stated it believed that EPA must disapprove the Virginia Regional Haze SIP due to the reliance on CAIR as a BART substitute and as part of its reasonable progress demonstration.

Response: EPA disagrees in general with this comment. EPA understands that CAIR has been remanded and that is the reason that the limited disapproval of the Virginia Regional Haze SIP is being promulgated. EPA has proposed that the Transport Rule is better than BART and proposed a Federal implementation plan (FIP) for Virginia to replace the CAIR reliance. (76 FR 82219) EPA does recognize that the other additional measures in the SIP submitted by Virginia help strengthen the Virginia SIP as a whole and are the basis for the limited approval portion of this action.

Comment: The commenter stated that the Virginia Regional Haze SIP does not provide enough reductions to meet the uniform rate of progress for James River Face Wilderness Area on the 20 percent best days and does not provide a reasoned justification for failing to do so. The

commenter stated the SIP is therefore, deficient and unapprovable. The Commonwealth has also not complied with the requirement of EPA's rules that it provide an assessment of the number of years it would take to attain natural conditions of visibility improvement on the best days based on the reasonable progress goals selected by the Commonwealth. The commenter states that a uniform rate of progress to achieve a 9.8 deciview reduction would require reductions of 0.163 deciview per year (dv/yr), or a total of 2.29 deciview over the 14 years of the first planning period.

Response: EPA disagrees with the commenter. 40 CFR 51.308(d)(1) states that “ the reasonable progress goals must provide for an improvement in visibility for the most impaired days over the period of the implementation plan and to ensure that no degradation in visibility for the least impaired days over the same period”. The URP does not apply to the 20 percent best days, but only the 20 percent worst or most impaired days. The requirement is to demonstrate that the 20 percent best days show no degradation in visibility which VADEQ has done on page 55 of their October 4, 2010 submittal. EPA believes that Virginia has met these requirements.

Comment: The commenter questioned EPA's authority to grant “limited” approvals and disapprovals. The commenter also states that the final limited approval and limited disapproval of the Virginia Regional Haze SIP cannot lawfully discharge or restart the clock on a FIP obligation because EPA is already under a nondiscretionary duty to promulgate a regional haze FIP by virtue of the EPA's findings of failure to submit for Virginia on January 15, 2009.

Response: EPA disagrees with the commenter and finds that the limited approval, limited disapproval is appropriate for SIP strengthening and due to the status of CAIR. The final limited disapproval must be signed prior to EPA issuing a FIP to correct the reliance on CAIR in Virginia's Regional Haze SIP. The explanation in the proposed notice explained the effects of a limited disapproval and the timeframe for a FIP to be promulgated. It is understood that EPA does not have those additional 2 years because EPA is obligated to finalize the actions on the Virginia Regional Haze SIP pursuant to a judicial consent decree entered by the National Park Conservation Association (NPCA). Also, EPA has statutory authority for limited approvals and limited disapprovals pursuant to Section 110(k)(3) of the CAA.

Comment: The commenter noted that Virginia has arbitrarily rejected Mid-Atlantic Northeast Visibility Union's (MANE-VU) requested measures as reasonable progress requirements to address Virginia's contribution to Brigantine National Wildlife Refuge, Great Gulf Wilderness Area, and Presidential Range – Dry River Wilderness Area. Virginia made assertions using VISTAS analysis showing that no stack contributes 1 percent or more to impairment at Brigantine, and that some of the units are temporarily shut down or predicted by the integrated planning model (IPM) model to be shut down by 2018. The commenter claimed these assertions are not federally enforceable and that EPA's rule requires Virginia to consult with the states whose class I areas it impacts "in order to develop coordinated emission management strategies." 40 CFR 51.308(d)(3)(i). The commenter believed that Virginia has not addressed its share of emission reductions required by 40 CFR 51.308(d)(3)(ii) in the SIP are needed to meet the progress goal for class I areas emissions impact and that the SIP should be disapproved. The commenter stated that Virginia did not comply with this requirement, nor did it provide the

modeling required in 40 CFR 51.308(d)(3)(iii). The commenter stated that EPA's approved regional haze SIP for New Jersey found the MANE-VU measures are "necessary to achieve the Reasonable Progress Goal" for Brigantine and other class I areas. The commenter stated that New Jersey and MANE-VU states considered the five factor analysis required and Virginia did not question those reasonable progress goals, or provide a reasoned basis for not doing them. See 40 CFR 51.308(d)(1)(i)(A).

Response: EPA disagrees with the comments regarding reasonable progress goals and finds the commenter's comparisons not analogous to Virginia. There are only four factors required for the reasonable progress goals in 40 CFR 51.308(d)(1)(i)(A) and they are cost of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and remaining useful life of any potentially affected sources. Virginia has supplied a technical analysis of the reductions in emissions towards meeting the MANE-VU measures by using the emission inventory, ambient monitoring data and modeling done by the regional planning organizations (RPO) VISTAS, which is found in VADEQ's appendices. EPA recommended that the states form RPOs for planning purposes of the regional haze SIPs, and both VISTAS and MANE-VU states did participate in coordination meetings for developing these SIPs. EPA has approved different approaches for establishing reasonable progress goals, and the states have the flexibility in doing so for their respective class I areas. Additionally, each RPO modeled using a separate set of assumptions to demonstrate the share of apportioned emission reductions. In using the VISTAS approach, as approved by EPA, Virginia has met its share of emission reductions for the class I areas it impacts. If the reasonable progress goals are not met or on track to be met for the 2018 targets, then the shortfall will be addressed in the

midcourse review and a SIP revision to address any additional measures needed at that time to address the shortfall in emission reductions.

IV. Final Action

EPA is finalizing its limited approval of the revisions to the Virginia SIP submitted on July 17, 2008, March 6, 2009, January 14, 2010, October 4, 2010, November 19, 2010, and May 6, 2011, address regional haze for the first implementation period. EPA is issuing a limited approval of the Virginia SIP since overall the SIP will be stronger and more protective of the environment with the implementation of those measures by Virginia and with having Federal approval and enforceability than it would without those measures being included in the Virginia's SIP. The final limited disapproval and FIP will be in a separate rulemaking action done by EPA. EPA is also approving this revision as meeting the applicable visibility related requirements of section 110(a)(2) of the CAA including, but not limited to sections 110(a)(2)(D)(i)(II) and 110(a)(2)(J) of the CAA, relating to visibility protection for the 1997 8-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those

imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country

located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action finalizing the limited approval of the Virginia Regional Haze SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA.)

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 30, 2012

W. C. Early,
Acting Regional Administrator,
Region III.

Therefore, 40 CFR Part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Amend § 52.2420, in the table in paragraph (e) by adding an entry for “Regional Haze Plan” at the end of the table to read as follows:

§52.2420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *				
Regional Haze Plan	Statewide	7/17/08 3/6/09 1/14/12 10/4/10 11/19/10 5/6/11	[Insert Federal Register publication date] [Insert page number where the document begins]	§52.2452(d); Limited Approval

3. Amend § 52.2452 by adding paragraph (d) to read as follows:

§ 52.2452 Visibility protection.

* * * * *

(d) Limited approval of the Regional Haze Plan submitted by the Commonwealth of Virginia on July 17, 2008, March 6, 2009, January 14, 2010, October 4, 2010, November 19, 2010, and May 6, 2011.

[FR Doc. 2012-14270 Filed 06/12/2012 at 8:45 am; Publication
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